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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/895,234	06/29/2001	Patrick Joseph Bohrer	AUS920010123US1	8647
7590	05/07/2004		EXAMINER	
Joseph P. Lally DEWAN & LALLY, L.L.P. P.O. Box 684749 Austin, TX 78768-4749			CHEN, TE Y	
			ART UNIT	PAPER NUMBER
			2171	9
DATE MAILED: 05/07/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/895,234	BOHRER ET AL. 	
	<b>Examiner</b>	<b>Art Unit</b>	
	Susan Y Chen	2171	

**– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –**

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 22 April 2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

1-21, 25-27

4)  Claim(s) 1-27 is/are pending in the application.  
4a) Of the above claim(s) 22-24 is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) \_\_\_\_\_ is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) 1-21 and 25-27 are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.  
\_\_\_\_\_

**DETAILED ACTION**

Claims 1-21 and 25-27 are pending for examination, claims 1-4, 10-11, 18-21 have been amended, and claims 25-27 are newly added.

***Election/Restriction***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-17 drawn to computer to computer data transfer speed regulating, classified in class 709, subclass 233.
- II. Claims 18-21 and 25-27, drawn to client / server data access controlling, classified in class 709, subclass 203.

The inventions I and II are related as sub-combinations disclosed as usable together in a single combination. The sub-combinations are distinct from each other if they are shown to be separately usable.

In the instant case, invention I (computer to computer data transfer speed regulating) has separate utility such as determining network data transferring rate between multiple computers. Invention II (client / server data access controlling) has separate utility such as accessing a disk storage connectable to a WEB server via the Internet by clients.

Because these inventions are distinct and search groups I and II are not required to be simultaneous, restriction for examination purposes as indicated is proper.

Examiner has conducted a telephone interview with the Applicant's attorney – Rodney Johnson on May 3, 2004. During the telephone conversation, the attorney is requested to make an oral election among the Group I, or II with/without traversal. In response to the request, the attorney indicates that he might need to get a restriction statement before giving the final election, as such, the office action is listed as above.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(l).

Applicant is reminded that the reply to this restriction election to be completed must include an election of the invention to be examined within one month from the mailing date of this office action, even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Chen whose telephone number is (703) 308-

1155. The examiner can normally be reached Monday through Friday from 7:30 A.M. to 4:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic, can be reached at (703) 308-1436. The fax phone number for this group is: (703) 872-9306.

Any inquiry of a general nature of relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-9600.

Susan Chen

May 3, 2004



UYEN LE  
PRIMARY EXAMINER